

Washington State's Property Tax Exemption for Anaerobic Digesters and Alternative Fuels

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I. Introduction

Intending to encourage the production of electricity and safe management of dairy waste, the Washington State Legislature in 2008 enacted a property tax exemption for anaerobic digesters.¹ Despite the Legislature's intent, anaerobic digesters are not yet commonplace in Washington. In 2011 there were six digesters serving eight dairy farms in Washington.²

Unfortunately, the intended beneficiaries of the exemption are at risk of being short-changed. This article briefly describes the Legislature's tax exemption. It then suggests why the development of anaerobic digesters in Washington may have been hindered by the Department of Revenue's failure to provide guidance or engage in rulemaking. Facility operators should review application of the exemption to their facilities.³

II. Background and the Statutory Text

Anaerobic digestion creates an environment in which naturally occurring microorganisms convert organic material from feedstock to methane-rich biogas. That biogas is typically converted to electricity or may

¹ The Legislature added anaerobic digesters to a list of alternative fuel production methods already subject to a tax exemption in RCW 84.36.635. The final bill was approved unanimously by the Washington Senate and by a vote of 96 to 1 in the House of Representatives.

² Washington State Department of Agriculture, Washington Dairies and Digesters, AGR PUB 602-343 (Oct. 2011) at 4.

³ The exemption for anaerobic digesters is available only for claims filed before December 31, 2012. RCW 84.36.635(3).

be flared to reduce greenhouse gas emissions.⁴ Digesters also reduce odors and can promote water quality through safe waste management.⁵

Market factors may explain in part the failure of anaerobic digesters to take hold in Washington.⁶ But another explanation may lie with inadequate application of the exemption. In one recent example, a county assessor exempted less than one acre of a digester facility: a feedstock storage structure and the digester vessel itself. Twenty additional acres, eleven buildings, piping, feedstock storage, lagoons, and equipment were all considered taxable.

Only after several years of negotiations and filing an appeal to the local board of equalization did the county extend the exemption to the entire anaerobic digester facility. The result: the facility's taxable land value dropped by more than 80%.

Why this occurred is less a function of the statute than its application. The Legislature created a simple standard for the exemption: are facility buildings, machinery, equipment and other personal property used primarily to support the exempt type of facility? If the answer is yes, the buildings, machinery, equipment and other personal property are exempt along with the underlying land. Additional land is also exempt if "reasonably necessary" for the facility operations.

The exemption statute includes five clauses. The first two clauses exempt buildings, machinery, equipment, other personal property, and their underlying land. The third clause exempts land that is "reasonably necessary" for operation of the facility. The fourth clause limits the exemption to non-crop lands. Lastly, the statute describes the property as "together" constituting "a new manufacturing facility or an addition to an existing manufacturing facility":

⁴ See EPA, An evaluation of a mesophilic, modified plug-flow anaerobic digester for dairy cattle manure; Market Opportunities for Biogas Recovery Systems—A Guide to Identifying Candidates for On-Farm and Centralized Systems (2006).

⁵ Martin, J. H., and K. F. Roos. 2007. "Comparison of the performance of a conventional and a modified plug-flow digester for scraped dairy manure." International Symposium on Air Quality and Waste Management for Agriculture. Broomfield, CO: American Society of Agricultural and Biological Engineers.

⁶ The price for electricity paid by utilities and value of carbon credits may be near the top of the list.

(2)(a) All buildings, machinery, equipment, and other personal property which are used primarily for the manufacturing of alcohol fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from property taxation for the six assessment years following the date on which the facility or the addition to the existing facility becomes operational.

RCW 84.36.635(2)(a) (italics added).

The exemption does not specify particular equipment or buildings. Instead, the exemption covers *facilities*, however they are designed or operated. Also, buildings, machinery, equipment, and personal property can be exempt even if used for other than anaerobic digestion purposes—they need only be “primarily” used by the facility. Finally, additional land may be exempt even if used for other purposes, so long as the land is also “reasonably necessary” for operation of the facility.⁷

While the Legislature’s intent may be clear, this has not ensured consistent application. As explained below, issues have arisen based on the lack of centralized agency guidance or rules.

III. The Consequence Of Allowing Counties to Interpret the Exemption

The Legislature authorized the Washington Department of Revenue (DOR) to “promulgate such rules . . . as necessary to properly administer” the

⁷ Other Washington administrative agencies have recently sought to promote anaerobic digester technology. Ecology recently revised its solid waste rules to include permit exemptions for anaerobic digesters. See <http://www.ecy.wa.gov/programs/swfa/rules/rule350.html>. See also <http://www.ecy.wa.gov/programs/swfa/ad/> (describing Ecology’s funding of anaerobic digester research).

exemption. RCW 84.36.635(3). DOR has thus far declined that invitation. DOR has also not produced formal or informal guidance on the subject.

The lack of rulemaking and guidance is problematic because county assessors are responsible for applying the exemption.⁸ In other words, the counties entrusted to interpret the statute (without publicly-available guidance or rules) are the same counties potentially deprived of property tax revenues by the exemption. The potential for conflict of interest (or the perception thereof) looms large.

The importance of educating counties on how digesters operate is critical. As it stands, an assessor's office employee must determine how property is primarily used or its degree of necessity for facility operations without understanding of how anaerobic digesters operate. The burden of providing this education falls on the facility.

The exemption determination also involves critical legal questions, such as the definition of anaerobic digester. An obvious purpose of digesters is to generate electricity. But counties have shown uncertainty about exempting electricity production equipment. Likewise, is a combustion engine exempt if the engine both heats the digester (presumably an exempt purpose) and powers an electric generator? Political and/or legal advocacy may be required to obtain a favorable interpretation.⁹

Finally, without DOR administering the exemption, a facility operator cannot assume that the experience of a digester in another county will apply (for better or worse). By distributing responsibility for the exemption to 39 counties, the public is ensured inconsistent outcomes.

IV. CONCLUSION

Through anaerobic digesters, Washington State has a unique opportunity to promote sustainable local agriculture, generate alternative energy sources, reduce water pollution, and reduce its greenhouse gas

⁸ Application forms are processed by the county assessor with jurisdiction over facility tax collection.

⁹ Public records show DOR's advice to assessors may amount to no more than a recitation of rules of statutory interpretation that favor strict interpretation of the statute (whatever that interpretation may be).

emissions. Recent experience suggests facility operators may reduce their tax burden by reviewing the application of the statute to their facility. Also, any legislative extension of the exemption should include statutory and regulatory improvements to promote the intended results.

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